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2007 WL 811943 (Tenn.Dept.Env.Conserv.)

Department of Environment and Conservation
State of Tennessee

***1** IN THE MATTER OF: ALAN'S INDUSTRIAL WASTE SERVICES INC. AND HAROLD COFFEY
CONSTRUCTION CO., INC., RESPONDENTS
DIVISION OF WATER POLLUTION CONTROL
Case No. **03-0101**
February 21, 2007

APPROVED FOR ENTRY:

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AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Commissioner's Order and Assessment of Civil Penalty, as the Commissioner's duly authorized representative, and the Respondent's Petition to Appeal. The Board, a quorum present, hereby adopts the following Findings of Fact, Conclusions of Law, Order and Assessments to which the parties have agreed, as evidenced by the signatures below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

While the Respondents do not necessarily agree with all of the Findings of Fact and Conclusions of Law contained in paragraphs I. through XXXVI. of Commissioner's

Order number **03-0101**, issued June 4, 2003, Respondents enter into this Agreed Order for reasons to compromise the pending claim, to avoid costly litigation, and in order to fully cooperate with the State Of Tennessee in this matter. These Sections are adopted by the Board and incorporated herein by reference.

ORDER

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS that:

1. The Respondents shall maintain appropriate erosion prevention and sediment control measures to assure that no additional material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until final grade and erosion preventive permanent cover are established.

2. As soon as possible, but no later than FOURTEEN (14) DAYS of receipt of this Order, the wetland mitigation site shall be indentured into a perpetual Declaration of Restrictions and submitted to the Division. A Declaration of Restrictions shall be attached to a deed to protect, in perpetuity, the aesthetic, educational, or ecological values of a certain real property and shall contain covenants prohibiting certain uses as outlined in Section 13 of the Respondents' ARAP permit.

3. Respondent, Howard Coffey Construction Co., Inc., shall within 1 year of the receipt of this Order, attend a Fundamentals of Erosion Prevention and Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation, and submit documentation of successful completion to Pat Patrick, Manager, Water Pollution Control, Jackson Environmental Field Office and the Manager of the Water Pollution Control Enforcement and Compliance section in Nashville.

4. The Respondents are hereby assessed a CIVIL PENALTY in the amount of THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00), payable as follows:

*2 A. The Respondents shall pay a CIVIL PENALTY to the Department, hereby assessed, of FIFTEEN THOUSAND DOLLARS (\$15,000.00).

B. The Respondents shall pay a CIVIL PENALTY to the Department, hereby assessed, of EIGHT THOUSAND DOLLARS (\$8,000.00), to be paid within THIRTY (30) DAYS of such default, in the event that the Respondents fail to timely comply with the requirements of Section 1 above.

C. The Respondents shall pay a CIVIL PENALTY to the Department, hereby assessed, of EIGHT THOUSAND DOLLARS (\$8,000.00), within THIRTY (30) DAYS of such default, in the event that the Respondents fail to timely comply with the requirements of Section 2 above.

D. Respondent, Howard Coffee Construction Co., Inc., shall pay a CIVIL PENALTY to the Department, hereby assessed, of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), within THIRTY (30) DAYS of such default, in the event that the Respondents fail to timely comply with the requirement of Section 3 above.

5. The Respondents shall pay damages in the amount of TWO THOUSAND FOUR HUNDRED and EIGHT DOLLARS and THIRTY-FOUR CENTS (\$2,408.34) within THIRTY (30) DAYS of receipt of this Order.

6. The Respondents shall otherwise conduct its business in accordance with the Act and rules promulgated pursuant to the Act.

7. In entering into this Agreed Order, Respondents have knowingly waived their right to a hearing pursuant to T.C.A. § 69-3-155 and any appeal therefrom.

RESERVATION OF RIGHTS

This AGREED ORDER is agreed to by respondents to settle a disputed claim. For purposes of this AGREED ORDER, but no further or otherwise, Respondents do not contest the findings of fact and conclusions of law described above. Except in a proceeding to enforce the terms and conditions of this AGREED ORDER or in future enforcement proceedings of the Department, this Order shall not be construed as an

admission or evidence of any liability in any other legal action.

REASONS FOR DECISIONS

The Board approves this Agreed Order because it is a fair and reasonable settlement of the matter. The Board also approves of settlements in that they conserve the resources of the Department and the Board.

A copy of this Agreed Order shall be served upon the Respondents by certified mail, return receipt requested. This final decision and order shall become effective upon entry.

FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:

(Illegible Signature)

Chair

Entered in the Office of the Secretary of State, Administrative Procedures Division, this 21st day of February, 2007.

Charles C. Sullivan, II

Director

Administrative Procedures Division

END OF DOCUMENT